

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

ROBERT GERALD REEVES,

Plaintiff,

v.

**NANCY A. BERRYHILL,
Deputy Commissioner of Operations of
the Social Security Administration,¹**

Defendant.

Case No. 2:16-cv-00114

Judge Aleta A. Trauger

ORDER

Plaintiff Robert Gerald Reeves brings this action under 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking judicial review of the Social Security Administration's denial of his application for disability insurance benefits under Title II of the Social Security Act and supplemental security income under Title XVI of the Social Security Act.

The magistrate judge to whom this matter was referred has issued a Report and Recommendation ("R&R") (Doc. No. 19), recommending that Reeves' motion be granted and that this matter be remanded to the Social Security Administration ("SSA") pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration. The SSA filed timely Objections (Doc. No. 20), to which the plaintiff has responded (Doc. No. 21).

¹ Nancy A. Berryhill was the Acting Commissioner of Social Security beginning January 23, 2017. However, her acting status ended as a matter of law in November 2017 pursuant to the Federal Vacancies Reform Act, 5 U.S.C. § 3345 *et seq.*, and Berryhill returned to her position of record as Deputy Commissioner of Operations. According to the agency's Social Security Administration's website, "[i]n accordance with the agency's Order of Succession, [Berryhill] continues to lead the Social Security Administration as we await the nomination and confirmation of a Commissioner." <https://www.ssa.gov/agency/commissioner.html> (last accessed March 29, 2018).

When a magistrate judge issues a report and recommendation regarding a dispositive pretrial matter, the district court must review *de novo* any portion of the report and recommendation to which a proper objection is made. Fed. R. Civ. P. 72(b)(1)(C); 28 U.S.C. § 636(b)(1)(C); *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001); *Massey v. City of Ferndale*, 7 F.3d 506, 510 (6th Cir. 1993). In conducting its review of the objections, the district court “may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3). The court’s review of the decision of an administrative law judge (“ALJ”) is limited to a determination of whether the ALJ applied the correct legal standards and whether the findings of the ALJ are supported by substantial evidence. *Miller v. Comm’r of Soc. Sec.*, 811 F.3d 825, 833 (6th Cir. 2016) (quoting *Blakley v. Comm’r of Soc. Sec.*, 581 F.3d 399, 405 (6th Cir. 2009)); see 42 U.S.C. § 405 (g) (2012) (“The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive.”).

In this case, the magistrate judge concluded that the ALJ’s decision was not supported by substantial evidence in the record, specifically because the RFC assigned by the ALJ failed to account for the plaintiff’s acknowledged moderate limitations in concentration, persistence and pace (“CPP”). The defendant objects, arguing that the ALJ properly gave great weight to Dr. Wright’s opinion that the plaintiff could maintain CPP for two hours at a time and that it “was within the zone of choice for the ALJ to include Dr. Wright’s limitations in the RFC.” (Doc. No. 20, at 3.) The defendant acknowledges that Dr. Wright agreed with Dr. Blazina’s assessment that the plaintiff was moderately limited in CPP but argues that Dr. Wright “accounted for that limitation by finding that Plaintiff could maintain [CPP] for two hours at a time.” (*Id.*)

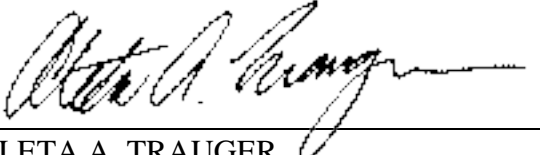
The court has reviewed the record as a whole in light of the defendant’s objection and

concludes that the magistrate judge did not err in finding that the ALJ's decision was not supported by substantial evidence in the record, for the reasons stated in the R&R. Accordingly, the defendant's Objections (Doc. No. 20) are **OVERRULED**; the R&R is **ACCEPTED** in its entirety, and the plaintiff's Motion for Judgment on the Record (Doc. No. 16) is **GRANTED**. The matter is **REMANDED** to the SSA for further consideration, pursuant to sentence four of 42 U.S.C. § 405(g).

The Clerk shall enter judgment in accordance with Fed. R. Civ. P. 58(b).

It is so **ORDERED**.

ENTER this 29th day of March 2018.



ALETA A. TRAUGER
United States District Judge